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5	Tel: (510) 465-0555 Fax: (510) 465-8093				
6	Attorneys for Ahmed Said,				
7	sued herein as Defendant TENDERLOIN GROCERY				
8	UNITED STATES DISTRICT COURT				
9	NORTHERN DISTRICT OF CALIFORNIA				
10	NORTHERN DIS	STRICT OF CALIFORNIA			
11	LORILLARD TOBACCO COMPANY, a	Case No. C 05 – 3123 CW			
12	Delaware corporation,				
13	Plaintiff,	ANSWER TO FIRST AMEN COMPLAINT AND DEMAN			
14	V.	TRIAL			
15	TENDERLOIN GROCERY, a business entity; AHMED SAID, an individual; and DOES 1 – 10 inclusive,				
16	Defendants.				
17					
18	Defendants TENDERLOIN GROCERY, a business entity and AHMED SAID, an individual				
19	doing business at Tenderloin Grocery, ("Defendants"), hereby answer the First Amended Complaint				
20	For Damages and Injunctive Relief ("FAC") filed herein by Lorillard Tobacco Company ("Plaintiff") as follows:				
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22	Defendants lack sufficient information and belief to answer the allegations contained in				
23	paragraphs 1, 2, 4, 5, 9, 10, 11, and 18, of the FAC, and on that ground, Defendants deny each and				
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25	every allegation contained in each such paragraph of the FAC in their entirety.				
26	2. Defendants deny the allegations of paragraphs 6, 7, 8, and paragraphs 12 through 48,				
27	inclusive, of the FAC in their entirety.				
28	ANSWER TO FIRST AMENDED COMPLAINT		PAGE 1		

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3. The Defendants reside and do business in the State of California and except as otherwise admitted or denied herein, the Defendants deny the allegation contained in paragraph 3 of the FAC in their entirety.

FIRST AFFIRMATIVE DEFENSE

4. As and for a first and separate affirmative defense, this answering party affirmatively alleges that Plaintiff's action should be barred and dismissed in its entirety by virtue of the fact that Plaintiff has failed to state and or prove facts sufficient to constitute a cause of action against Defendants or any of them upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

5. As and for a second and separate affirmative defense, this answering party affirmatively alleges and preserves all of Defendants' equitable defenses, including waiver, estoppel, latches, and unclean hands and that pursuant to the facts, or lack thereof as proven at trial, Plaintiff's action should be barred in its entirety on such equitable grounds.

THIRD AFFIRMATIVE DEFENSE

6. As and for a third and separate affirmative defense, this answering party affirmatively alleges and preserves all of Defendants' defenses to the imposition of a judgment including punitive damages on the grounds that such damages are illegal penalties prohibited and unconstitutional under the laws and constitutions of the State of California and the United States of America. Further, Defendants assert that, to the extent that Plaintiff's Complaint seeks exemplary or punitive damages, it violates Defendant's rights to protection for "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, section 17, of the California Constitution and violates Defendant's rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and, therefore, fails to state a cause of action supporting the punitive or exemplary damages claimed.

FOURTH AFFIRMATIVE DEFENSE

7. As and for a fourth and separate affirmative defense, this answering party affirmatively alleges that assuming arguendo Plaintiff is able to prove damages at trial, Defendants assert that any ANSWER TO FIRST AMENDED COMPLAINT

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such damages were legally caused by the acts, negligence and omissions of Plaintiff and not by any legally cognizable acts or omissions on the part of Defendants. Plaintiff's claims should be barred and Plaintiff should take nothing by virtue of this action as a legal result of the acts, negligence and omissions of Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

8. As and for a fifth and separate affirmative defense, Plaintiff's claims against Defendants are barred by virtue of Plaintiff's failure to mitigate and minimize the alleged damages which Plaintiff claims it suffered in this case.

SIXTH AFFIRMATIVE DEFENSE

9. As and for a sixth and separate affirmative defense, Plaintiff's claims against Defendant are barred by the doctrine of comparative negligence. Plaintiff's damages, if any, should be apportioned among all parties, including Plaintiff, in proportion to such parties' respective fault.

SEVENTH AFFIRMATIVE DEFENSE

10. As and for a seventh and separate affirmative defense, Plaintiff's claims against Defendant are barred by the doctrine of assumption of risk. Plaintiff's negligence, carelessness, assumption of risk and other conduct were the superseding legal causes of any alleged damages Plaintiff has suffered.

EIGHTH AFFIRMATIVE DEFENSE

11. As and for a eighth and separate affirmative defense, all Plaintiff's claims for injunctive relief should be barred as Plaintiff is unable that Defendants caused Plaintiff any injury or damage, that Plaintiff has been irreparably damaged and or that Plaintiff is entitled to injunctive relief pursuant to prevailing law or statute.

NINTH AFFIRMATIVE DEFENSE

12. As and for a ninth and separate affirmative defense, Defendants request this Court to enter a judgment in Defendants' favor awarding them affirmative relief, damages, attorneys fees, costs, and or exemplary damages under each statutory scheme, (whether state or federal), pursuant

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1	to which Plaintiff brings the within action and or any part thereof.			
2	WHEREFORE, Defendants pray for entry of judgment in their favor and against Plaintiff as			
3	follows:			
4	13.	That Judgment be entered in favo	or of Defendants and against Plaintiff;	
5	14.	That Plaintiff take nothing by Plaintiff's action herein;		
6	15.	That Defendants recover judgment against Plaintiff by virtue of their Counter		
7	Claims filed herein;			
8	16.	That Defendants be awarded all	of their attorneys fees and costs incurred in this	
9	action pursuant to relevant provisions of the law;			
10	17.	That Defendants be awarded all	of their attorneys fees and costs incurred in this	
11	action pursuant to relevant provisions of the law and in accordance to proof;			
12	18.	That Defendants be awarded suc	ch other and further relief as is just and proper.	
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14	Dated: Septe	ember 21, 2005	MICHAEL BLUMENFELD A Professional Corporation	
15			71 Tolesololul Corporation	
16			/s/	
17			By: Michael J. Blumenfeld Attorneys for Defendants	
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